

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Augustine et al.,	.	Docket #13-CV-6606 (BMS)
	.	
Plaintiffs,	.	
	.	United States Courthouse
vs.	.	Philadelphia, PA
	.	April 15, 2014
Ramsey, et al.,	.	10:08 a.m.
	.	
Defendants.	.	

.....

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE BERLE M. SCHILLER
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Plaintiffs:

Lloyd Long, Esq.
Krasner Hughes & Long, LLC
1221 Locust St.
Philadelphia, PA 19107

Paul J. Hetznecker, Esq.
1420 Walnut Street-Ste. 911
Philadelphia, PA 19102

Elizabeth A. Hoffman, Esq.
Krasner Hughes & Long, LLC
1221 Locust St.
Philadelphia, PA 19107

For the Defendants:

Amanda C. Shoffel, Esq.
City of Philadelphia Law
Department
Civil Rights Unit
1515 Arch Street-14th Fl.
Philadelphia, PA 19102

Audio Operator:

Chris Campoli

Transcribing Firm:

Writer's Cramp, Inc.
6 Norton Rd.
Monmouth Jct., NJ 08852
732-329-0191

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 THE CLERK: All rise.

2 THE COURT: Good morning. Good morning again.

3 ALL: Good morning, Your Honor.

4 THE COURT: All right. This is the case of
5 Augustine vs. Ramsey, 13-6606. Counsel, identify yourselves
6 for the record.

7 MR. LONG: Good morning, Your Honor. Lloyd Long,
8 Krasner & Long on behalf of Plaintiffs.

9 MR. HETZNECKER: Good morning, Your Honor, Paul
10 Hetznecker, on behalf of the Plaintiffs.

11 MS. HOFFMAN: Good morning, Your Honor, Elizabeth
12 Hoffman on behalf of the Plaintiffs.

13 THE COURT: You feel outnumbered over there?

14 MS. SHOFFEL: In my opinion, it's just about even,
15 Your Honor.

16 THE COURT: Okay.

17 MR. LONG: Wow.

18 THE COURT: Go ahead.

19 MS. SHOFFEL: Amanda Shoffel for the City
20 Defendants.

21 THE COURT: All right. Please be seated.

22 MR. HETZNECKER: Mr. Long's going to be handling the
23 argument today, Your Honor.

24 THE COURT: Then why are you here?

25 MR. HETZNECKER: Well, I wanted to see you.

1 THE COURT: Okay. And what's your excuse?

2 MS. HOFFMAN: I'm his associate.

3 THE COURT: All right.

4 MS. HOFFMAN: I'm just here for the ride.

5 THE COURT: Okay. You filed a Motion to Dismiss.

6 So, let's hear from you. I've read your motion.

7 MS. SHOFFEL: Thank you, Your Honor. I guess I'll
8 just briefly summarize the points in the motion and then I'd
9 like to briefly address to one of the issues that Plaintiff's
10 counsel raised in their response brief.

11 THE COURT: Okay.

12 MS. SHOFFEL: First of all, permissive joinder in
13 this case, if allowed by the Court, will result in prejudice
14 to the Defendants, confusion of the issues to the jury --

15 THE COURT: In what way?

16 MS. SHOFFEL: Well, prejudice to the Defendants
17 because 26 Plaintiffs testifying about something that
18 happened will amount, in our opinion, to propensity evidence.
19 If everyone's saying, the Defendants collectively did
20 something wrong, that's not the appropriate standard in civil
21 rights cases. In civil rights cases, they have the burden to
22 show that each individual Defendant has liability in this
23 case.

24 THE COURT: Well, under Rule 20, didn't these claims
25 all arise out of the same transaction or occurrence?

1 MS. SHOFFEL: That's --

2 THE COURT: There's really only one question of law
3 or fact and they're common to all Plaintiffs?

4 MS. SHOFFEL: That's correct, Your Honor, but even
5 in the response brief, they admitted that there are claims
6 particular to some Plaintiffs and not others, and claims
7 particular against certain Defendants and not others. So,
8 let me explain that. First of all, they claim in the
9 response that two Plaintiffs -- only two Plaintiffs are
10 identified as having First Amendment claims. Plaintiff --
11 excuse me, James Savage and T.J. Ghose, but there are no
12 allegations by the remaining 24 Plaintiffs that there was any
13 First Amendment claim.

14 Similarly, they admit in their response brief that there
15 are certain claims against the supervisory Defendants, those
16 being Ramsey, Deputy Commissioner Bethel, and Captain Fisher,
17 who gave the orders to make the arrest, but they admit, or
18 concede, in their response that those are the only claims
19 against those officials and there are still excessive force
20 claims against those officials, and other claims that are not
21 particular to those Defendants.

22 THE COURT: All right, go ahead.

23 MS. SHOFFEL: Thank you. In addition to being -- to
24 prejudicing the Defendants, it will be a confusion of issues
25 to the jury. As I stated before, liability for each

1 particular Defendant, also unnecessary witnesses. There are
2 certainly some Plaintiffs and some Defendants who will have
3 no knowledge of some of the arrests.

4 THE COURT: You don't think a jury is capable of
5 sorting out which witness is dealing with which Plaintiffs?

6 MS. SHOFFEL: Your Honor, I do think by the time
7 that the case gets to a jury, we'll be able to determine it.
8 But according to Rule 8, we have to have notice of each claim
9 against each Defendant, and that's the second part of my
10 argument and I'm -- that we addressed in our motion. This
11 fails to meet the requirements of Rule 8 for a couple of
12 reasons. As I stated before, there are some claims that are
13 particular to certain Plaintiffs and not others, and certain
14 Defendants and not others. In addition, there are six police
15 officers who are identified as parties and then never
16 mentioned again throughout the entire body of the Complaint
17 anywhere. There are -- the first five pages of the Complaint
18 detail the history --

19 THE COURT: Well, do you want them to file an
20 Amended Complaint? Is that what you want them to do?

21 MS. SHOFFEL: Yes, Your Honor.

22 THE COURT: Okay. Thank you. Let me hear from you,
23 Mr. Long.

24 MR. LONG: Certainly. And good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. LONG: Your Honor, I know that the Court's aware
2 of the allegations in the Complaint by the Plaintiffs, the
3 factual allegations. So, I'd like to take an opportunity to
4 briefly respond to some of the things that moving Defendants
5 have raised. The first one is that the First Amendment
6 Complaints are somehow unique to only two Plaintiffs, who
7 would be T.J. Ghose and James Savage. That's simply an
8 inaccurate reading of both the Complaint and our response to
9 the moving Defendant's Motion to Dismiss. In fact, all the
10 Court needs to look at are paragraphs 22 to 23, and 27 to 31
11 of the Complaint to see that the allegation of violation of
12 First Amendment rights is universal to all Plaintiffs. The
13 mere fact that two Plaintiffs had their First Amendment
14 rights trampled upon a few blocks from the other 24
15 Plaintiffs does not somehow make the two Plaintiffs mentioned
16 by name in one spot, and the other 24 Defendants separate
17 claims.

18 These are claims that occurred the same night, in the
19 same two to three block vicinity involving the same group of
20 people, the same Defendants. Plaintiffs are all alleging the
21 exact same harms. They are --

22 THE COURT: The City has asked -- she asked whether
23 or not you could file an Amended Complaint that might be able
24 to clarify it a little better for her. Are you able to do
25 that or do you think you've made it as clear as possible

1 here?

2 MR. LONG: Your Honor, at this time -- I mean, I
3 think that we have made -- we have put the City on notice of
4 the claims that they're defending against. And an Amended
5 Complaint is simply asking us, asking Plaintiffs to put forth
6 something that the Rule -- that neither the Rules nor
7 applicable precedent requires. They're asking for
8 essentially a State Court pleading. They're asking us to say
9 the exact factual allegations that discovery is going to
10 disclose. And what we're required to do under Rule 8 is put
11 forth a short and plain statement.

12 THE COURT: All right. I'm just throwing it out.
13 That's --

14 MR. LONG: I understand, Your Honor.

15 THE COURT: Okay.

16 MR. LONG: I do.

17 THE COURT: Have a seat.

18 MS. SHOFFEL: Okay.

19 THE COURT: I'm still -- I'm not done with him. In
20 Count 4, you allege that the Defendants committed assault in
21 violation of the United States Constitution. What provision
22 of the Constitution are you relying on?

23 MR. LONG: That would be the Fourth Amendment, Your
24 Honor.

25 THE COURT: Fourth Amendment?

1 MR. LONG: Yes, sir.

2 THE COURT: Okay. And what facts do you have that
3 support your excessive force claim?

4 MR. LONG: That the officers grabbed people who were
5 not engaging in any criminal activity.

6 THE COURT: Excessive force?

7 MR. LONG: Yes, Your Honor. That they grabbed
8 people who --

9 THE COURT: Excessive force is a specific kind of
10 allegation.

11 MR. LONG: I understand.

12 THE COURT: And you're saying that the mere fact
13 that they grabbed people makes it an excessive force claim?

14 MR. LONG: What I am saying is that --

15 THE COURT: I can understand assault, maybe a
16 battery, maybe whatever, but excessive force?

17 MR. LONG: Your Honor, I -- under the pleading
18 standards that we --

19 THE COURT: Okay. I'm just wondering what your --
20 is this really an excessive force claim?

21 MR. LONG: I think that there is a viable excessive
22 force claim here. Whether discovery reveals that at some --

23 THE COURT: Well, you know your Plaintiffs.

24 MR. LONG: I do, Your Honor.

25 THE COURT: Were any of them beaten, bloody,

1 mutilated?

2 MR. LONG: Not to my knowledge, Your Honor. I
3 cannot say that there --

4 THE COURT: So, why would you even put in excessive
5 force?

6 MR. LONG: Your Honor, that was a decision that we
7 made at the time that we crafted the pleading.

8 THE COURT: Okay, and you also have intentional and
9 negligent infliction of emotional distress. Did those kinds
10 of allegations require some kind of physical component to it,
11 like touching of some kind?

12 MR. LONG: No, Your Honor. I believe that they
13 merely require activity that rises to the level of
14 outrageousness, or that inflicts serious emotional distress
15 upon the Claimants. I don't believe that it actually
16 requires a physical touching.

17 THE COURT: Are you alleging that the supervisor
18 Defendants are liable for violations of State law by
19 arresting officers?

20 MR. LONG: If I may, Your Honor.

21 THE COURT: What legal theory are you alleging that?

22 (Pause in proceedings)

23 MR. LONG: Your Honor, with respect to the State law
24 claims, Section 1983 prohibits respondeat superior. State
25 law claims do not prohibit respondeat superior. And given

1 the fact that --

2 THE COURT: So, that's the legal theory against the
3 -- under the State law for the supervisory Defendants to be
4 held liable?

5 MR. LONG: Specifically for the State law claims,
6 that is correct, Your Honor.

7 THE COURT: And I guess I'm similarly -- what legal
8 theory are you seeking to hold the City of Philadelphia
9 liable for violations of State law?

10 MR. LONG: Your Honor, it's -- if I may have one
11 moment to review the Complaint.

12 (Pause in proceedings)

13 MR. LONG: Your Honor, the City of Philadelphia is
14 not a Defendant in any claim except Count 15. All -- the
15 first 14 counts are against the individual Defendants. Count
16 15 is a Monell claim against the City of Philadelphia.

17 THE COURT: Do you know of any policy that you're
18 alleging that the City violated, or has a policy to arrest
19 these particular Plaintiffs?

20 MR. LONG: Yes, we do, Your Honor, and it's --

21 THE COURT: What policy is that?

22 MR. LONG: The policy is going to be revealed
23 through discovery, but more specifically, Your Honor, it's
24 our position that the City of Philadelphia throughout years
25 has -- throughout a period of many years has actively

1 suppressed actions like the Occupy movement.

2 THE COURT: Can you give me an example?

3 MR. LONG: Certainly, Your Honor. The RNC
4 Convention back in, I believe it was 2000, there were mass
5 arrests of people --

6 THE COURT: But what was the policy? Is it a
7 written policy? What is it?

8 MR. LONG: Well, Your Honor, I would submit that
9 this simply is -- the Court is asking Plaintiffs to put forth
10 a Summary Judgment Motion after discovery. And I --

11 THE COURT: Or is this -- you're just making an --
12 there's nothing you can point to right now, is that what
13 you're saying?

14 MR. LONG: I'm saying that I can point to historical
15 knowledge, including --

16 THE COURT: Of things that have happened?

17 MR. LONG: Yes, Your Honor.

18 THE COURT: But even in that case, with the RNC, did
19 anyone sue the City?

20 MR. LONG: Your Honor, may Mr. Hetznecker speak on
21 this particular point?

22 THE COURT: Of course he can.

23 MR. HETZNECKER: Thank you, Judge. I would --

24 THE COURT: I had to go through all kinds of hoops
25 to finally get you to talk.

1 MR. HETZNECKER: Well, no, Mr. Long has done an
2 excellent job. I will provide, as I am older than he is,
3 much older, he's deferred to my age and my experience in
4 this. Not only RNC during 2000, which I was a party and
5 Mr. Krasner and I was a party in representing many of those
6 Defendants, both in the criminal side but also in the civil
7 rights case, but since then, I have represented over the
8 course of the last -- and even before 2000, over the last 20
9 years, numerous individuals who have been arrested based on
10 what we believe to be a de facto policy. More importantly,
11 there is a policy, we believe, that was carried over from
12 Commissioner Ramsey from Washington, D.C., and the efforts he
13 made to suppress dissent in Washington, D.C., and duplicated
14 and replicated those efforts here in Philadelphia as
15 Commissioner of Police. So, we seek to establish this
16 through discovery.

17 And it's information -- and I agree with Mr. Long. I
18 think it's an interesting question you posed, but it's really
19 a question that would be raised at a Motion for Summary
20 Judgment. On a Motion to Dismiss, I think we've plead
21 clearly the question of the Monell claim. It's plead clearly
22 and it's enough to put them on notice. But we -- I'm putting
23 the Court on notice, we seek discovery that goes back
24 historically in the City of Philadelphia on a policy and
25 practice that would establish violation of First Amendment

1 rights, and I'll give you an example.

2 In this particular case, what they did was they trained
3 the officers to have a -- to be on video and we've got the
4 videos, be on video reaffirming the protection to the First
5 Amendment. It's fascinating because what they do is they'll
6 say over and over again in a gathering, okay, there's a
7 supervisor standing at the front of the room and says, okay,
8 we all understand that we're not here to violate anyone's
9 First Amendment rights, and then precisely they do exactly
10 that on the night in question. They did that in view of --
11 full view of the fact that for 43 days or almost 60 days,
12 they had chaperoned, so to speak, through civil affairs, and
13 bike police officers, and others, chaperoned marches and
14 demonstrations that went throughout the City protecting those
15 First Amendment rights, allegedly. And then on the night in
16 question, they did just the opposite, and they did the
17 opposite based on the directive, we believe, and we know for
18 a fact with respect to Officer Bethel, we also believe with
19 respect to Ramsey, they did so precisely in contravention of
20 that stated alleged staged protection of First Amendment
21 rights which they put on video.

22 This goes back, as I said, this goes back to the BIO
23 Convention in 2005 where people were wrongfully arrested and
24 then acquitted on First Amendment arguments. It goes back to
25 arrests that were made in countless demonstrations going back

1 to 1993, in which I represented -- since I left the
2 Defenders, pro bono, mind you, protestors who have protested
3 everything from the death penalty to -- against the death
4 penalty to corporate power, to educational policies.
5 Throughout the last 20 years, there has been an effort on the
6 part of the police department to violate First Amendment
7 rights in a systematic way.

8 Now, to the extent of that -- how far that evidence or
9 how much of that evidence gets in is a question for the Court
10 later on for trial, obviously. But for pleading purposes,
11 we've established, I think, in the Complaint enough to put
12 them on notice and we also believe we have enough evidence
13 even at this point to make the specific discovery requests
14 that I'm going to submit to the City for specific information
15 about the City's policies regarding arrests of protestors,
16 surveillance of protestors, because there's another aspect of
17 this which we mention in the Complaint. Part of the chilling
18 effect that implicates, or undermines, the First Amendment is
19 the extent to which the City allowed for surveillance and
20 undercover infiltration of the Occupy movement and here in
21 Philadelphia.

22 THE COURT: By who?

23 MR. HETZNECKER: By the City of Philadelphia, by the
24 -- we, believe the Federal Anti-Terrorism Task Force.

25 THE COURT: But why isn't that in this?

1 MR. HETZNECKER: I do mention surveillance in the
2 Complaint. It is --

3 THE COURT: I don't mean just surveillance, the
4 federal --

5 MR. HETZNECKER: Well, we seek --

6 THE COURT: -- component of this.

7 MR. HETZNECKER: Well, we seek to discover as much
8 as we can regarding that part of it and --

9 THE COURT: Okay.

10 MR. HETZNECKER: -- that's going to be an element of
11 our discovery requests.

12 THE COURT: Okay, all right.

13 MS. SHOFFEL: Your Honor, if I may just briefly
14 respond to a couple of points --

15 THE COURT: Sure.

16 MS. SHOFFEL: -- raised by Plaintiff's counsel.
17 Thank you. First, on the intentional infliction of emotional
18 distress claims, they are required to show by competent
19 medical evidence through an expert evidence of those claims
20 to substantiate an intentional tort.

21 THE COURT: Well, he said that at this stage you
22 just have to make a generic comment, letting them know. See,
23 I'm putting them on notice that if they don't have it, they
24 shouldn't be processing it, and pursuing it.

25 MS. SHOFFEL: Thank you, Your Honor. The second

1 item is that negligent infliction of emotional distress is
2 barred by the Political Subdivision Tort Claims Act. That is
3 something that there's not an exception to, and it's still
4 included in the Complaint against all Defendants.
5 Additionally, the Political Tort Claims Act bars the theory
6 of respondeat superior against the City or supervisors for
7 the acts of an employee. So, at least some of these
8 supervisory Defendants should not be included in the State
9 claims. And finally, on the Monell issue, I understand
10 everything that Plaintiff's counsel has represented here.
11 That was not clear to me through this Complaint. I would,
12 again, renew my request for them to file an Amended Complaint
13 with this information in it.

14 MR. HETZNECKER: Judge, with all due respect, there
15 is -- there are paragraphs, and Mr. Long is looking for them,
16 in which I -- we allege the federal involvement, coordination
17 between the Federal Government and the City police. The City
18 police, the civil affairs unit, and other -- the intelligence
19 unit of the City police department is fronting, essentially,
20 this investigation.

21 If I may, Judge, paragraph 4, it says in response, "the
22 Philadelphia Police Department, through orders from the
23 Defendant Commissioner Charles Ramsey, Deputy Commissioner
24 Bethel, and other known and presently unknown police
25 officials, in conjunction with federal authorities,

1 maintained a constant presence through direct and undercover
2 surveillance, as well as infiltration of the Occupy Philly
3 demonstrators during the course of the seven week protest."
4 So, and then we go on and describe the many meetings and
5 marches that take place.

6 THE COURT: All right, let me ask you while I have
7 you here, you have an allegation of conspiracy against the
8 six Defendant officers who were not supervisors. Do you have
9 any facts to support a conspiracy of the non-supervisory
10 Defendant officers?

11 MR. HETZNECKER: The conspiracy would envelope
12 everyone. The conspiracy is a part of the --

13 THE COURT: Well, is there some kind of evidence of
14 an agreement?

15 MR. HETZNECKER: Yes. Well, we think we can
16 establish the agreement. And as you know, the agreement can
17 be established either through a direct agreement, and as you
18 instruct juries frequently, that agreement is always often
19 not -- is tacit or it's established by circumstantial
20 evidence. I think we can establish more than circumstantial
21 evidence. I think we can establish much more than that
22 because on the night of the Occupy arrests, there was a
23 national effort to arrest Occupy protestors throughout the
24 country. Now, it's our position that that was part of the
25 conspiracy, that there was an agreement at a high level to

1 make arrests --

2 THE COURT: That may be at a higher level. I'm
3 talking about these six officers on the street.

4 MR. HETZNECKER: Well, they're -- they would be part
5 of the agreement because they were ordered to do so.
6 Certainly, you know, when someone is given an order to
7 execute a particular agreement at a higher level, we can
8 allege that, you know, the -- it's like the guy on the
9 corner, the street dealer on the corner, the question is
10 whether he's enveloped in a larger conspiracy is really a
11 question for the jury. That is whether or not he understood
12 that the guys who arrange for the cocaine to be delivered to
13 that particular corner, people they may have never met, were
14 part of a greater conspiracy that enveloped the activity.
15 And we're alleging the same thing here. Essentially, that's
16 a question for the jury.

17 Now, certainly at a Summary Judgment Motion, a lot of
18 these issues, I think, flesh themselves out and there may be
19 -- and I'll defer to Mr. Long on this, there may be certain
20 claims, maybe some of the State law claims that we would
21 concede at that point. But this is at a Motion to Dismiss,
22 and I think based on the well-pleaded Complaint at this
23 point, I would request that Your Honor deny the City's Motion
24 at this juncture. I think we need to go forward with
25 discovery and flesh a lot of these issues out through

1 discovery.

2 MS. SHOFFEL: Your Honor, just briefly on the
3 conspiracy issue. The District Court judgment and underlying
4 opinion in Bell Atlantic discussed the pleading requirements
5 for a conspiracy claim and it was {quote}{unquote} "a plus
6 factor" that is required, either a common agreement or an
7 allegation that behavior against the individual Defendants
8 economic interest absent an agreement, and neither of those
9 things are present in the Plaintiff's Complaint and that's
10 why the conspiracy claim at this point is insufficient as
11 well.

12 THE COURT: All right, anything else?

13 MR. HETZNECKER: One second, Your Honor.

14 THE COURT: Go ahead.

15 MR. HETZNECKER: We believe that's not quite
16 accurate and we're looking for the section in the Complaint.

17 MR. LONG: Your Honor, in paragraph 33 of the
18 Complaint, we state that as a direct and proximate result of
19 the Defendant's actions, the actions being planning to arrest
20 the demonstrators, Plaintiffs were deprived of rights,
21 privileges, and immunities under the First, Fourth, and
22 Fourteenth Amendments of the United State Constitution,
23 particularly the right to be free from retaliatory conduct
24 against protected speech and assembly, and a number of other
25 rights, including the right to be free from malicious

1 prosecution and unlawful arrest. Plaintiffs were similarly
2 deprived of the right not to be victim of conspiracies of
3 State actors to violate those clearly established rights.

4 We have pleaded that the Defendants acted in concert and
5 conspiracy to arrest --

6 THE COURT: An officer merely following the orders
7 to arrest people isn't a co-conspirator. He may be doing
8 other things, but when you're alleging a conspiracy, police
9 officers at the street who didn't sit down and talk to these
10 people, I have -- I'm having difficulty with that.

11 MR. HETZNECKER: Judge, why would that be no
12 different than the street corner dealer as opposed to the guy
13 who transported from Florida --

14 THE COURT: Because the street corner dealer is
15 dealing in drugs which he knows are illegal.

16 MR. HETZNECKER: But in this particular case, the
17 cops should know that it's illegal to arrest someone without
18 probable cause. And in fact, it's presumed, in a case --

19 THE COURT: But that doesn't make it a conspiracy.

20 MR. HETZNECKER: It could, in fact, because if
21 they've agreed to violate someone's rights without probable
22 cause, in contravention of the First and Fourth Amendments,
23 then it is a conspiracy.

24 THE COURT: Do you think a beat man, a beat
25 patrolman --

1 MR. HETZNECKER: Sure. In fact, there's a case,
2 Your Honor, if I may. I think -- I don't know if I have it
3 in my notes, but there's a case in which we presume -- the
4 Court presumes that a police officer understands that he must
5 have probable cause to make an arrest. So, based on that,
6 that presumption that the Court -- that the law automatically
7 presumes that the officer understands the power that he has
8 to make an arrest, but also the limitations on that power.
9 So, if in fact he conducts an arrest that he knows to be in
10 contravention of the First and Fourth Amendment, then yes, it
11 falls within a conspiracy.

12 Now, my argument is that, again, I think we're leaping
13 ahead to a Motion for Summary Judgment kind of argument. The
14 real question here is, can we establish through discovery the
15 elements that we've set forth in a well-pleaded Complaint?
16 And I'm very confident we can, and you know, certainly if
17 we're at the point where discovery is closed and we're being
18 -- you know, we -- there's some question about that, I'll
19 stand here either concede it, or I'll argue the point.

20 But at this level, certainly an officer that is
21 presumed, and again I can -- if the Court will wait one
22 moment, I think I have the cite and if I don't, I can pass it
23 on to the Court, that a police officer's presumed to
24 understand that he must have probable cause. Here it is.
25 "Police officers clearly know that they need probable cause

1 to make an arrest and know that they are personally liable."
2 And this is Pritzker v. City of Hudson. It's at 26 F.Supp.
3 2d 433. It's a New York District decision in 1998. "Police
4 officers know that it is a violation of well-settled
5 Constitutional rights to arrest without probable cause."

6 So, it's clear to me that -- at least, I hope it's clear
7 to the Court in the Complaint that if, in fact, they were
8 ordered to make an arrest without probable cause then they
9 would -- that would envelope them in a conspiracy because
10 they are contravening their own individual, you know, rights
11 and obligations. There is no, you know, Nuremberg defense
12 for that. They essentially have to follow what they know to
13 believe the law. So, even if they're ordered to violate the
14 law, then certainly -- and they do so, then they're part of
15 that conspiracy. And that's what we alleged here. That when
16 the protestors were ordered to get out of the street and get
17 onto the sidewalk, and they did so, and then they were
18 arrested because they complied with that order, after having
19 been marched with the alleged protection, fully enveloped of
20 all the police officers both front and back, then that's a
21 clear violation of the Fourth and First Amendments --

22 THE COURT: All right, final word.

23 MR. HETZNECKER: -- and it's a conspiracy.

24 MS. SHOFFEL: Thank you, Your Honor. I actually
25 agree with some of what Plaintiff said. I mean, every police

1 officer should know that they can't make an arrest without
2 probable cause. That, in and of itself, is not sufficient to
3 allege a conspiracy. And when Mr. Long was -- he paraphrased
4 a very important part of this Complaint. He said, "as a
5 direct and proximate result of the Defendant's actions," and
6 he added "through planning." That's simply not in the
7 Complaint. All it says is "actions," it's insufficient on
8 its face. Thank you.

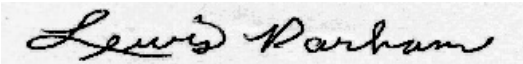
9 THE COURT: All right. You'll get my ruling. Thank
10 you.

11 ALL: Thank you, Your Honor.

12 (Court adjourned)
13

14 CERTIFICATION

15 I certify that the foregoing is a correct transcript from the
16 electronic sound recording of the proceedings in the above-
17 entitled matter.
18
19

20 
21

4/29/14

22
23 _____
Signature of Transcriber

Date